

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Section 73.202(b) )

Table of Allotments, )

FM Broadcast Stations )

(Nogales and Vail, Arizona) )

MM Docket No. 00-31

RM-9815

To: The Chief, Allocations Branch

**COMMENTS AND COUNTERPROPOSAL**  
**OF**  
**BIG BROADCAST OF ARIZONA, L.L.C.**

Big Broadcast of Arizona, L.L.C. ("BBA"), by its attorney, pursuant to Section 1.420(d) of the Commission's rules, hereby respectfully submits its comments and counterproposal in the captioned matter. As demonstrated herein, the Commission has already determined in its Notice of Proposed Rule Making herein, DA OO-369, released February 25, 2000 ("NPRM") that Vail, Arizona warrants a first local service. That is the purpose of the counterproposal advanced herein. At the same time, though, the NPRM cited numerous countervailing detriments to the petitioner's proposal to remove station KZNO (FM) on Channel 252A from Nogales in order to accommodate a move to Vail. BBA's counterproposal would preserve KZNO's service to Nogales and thereby obviate these detriments.

The Commission found that the communities of Nogales and Vail are 66.1 kilometers apart and therefore do not meet the Commission's separation requirement for first adjacent Class A channels. (NPRM at para. 2); it is for that reason that the petitioner's proposal to reallocate Channel 253A at Vail is mutually exclusive with the preservation of Channel 252A at Nogales. However, by specifying a relatively minor site restriction of 5.9 km, both channels will meet the

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Commission's full separation requirement, and thereby no longer require that Nogales lose the valuable service upon which it now depends from KZNO.

It should be emphasized that in its NPRM, the Commission considered and apparently approved the evidence filed by petitioner demonstrating that Vail is a licensable community (NPRM at para. 5) and therefore BBA need present no further evidence to establish the viability of the very same community for purposes of its counterproposal. The Commission further found that a Vail facility would provide new service to 27,480 people (NPRM at para. 5). However, the Commission was led to question the public interest benefits of the petitioner's requested change of community, due to the detriments of a substantial net loss area (NPRM, para. 9), the creation of white and gray area (NPRM, para. 8) and the absence of domestic local stations which would continue to serve Nogales were KNOB to be relicensed to Vail (NPRM, para. 7). As noted by the Commission, these are indeed serious matters which mitigate against grant of the initial proposal. As the Commission recently noted in its 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules, 13 FCC Rcd 14849 (1998) at n. 25, case law suggests that the Commission is precluded from allowing the creation of any white or gray areas. Indeed, it is well established that "...the withdrawal or downgrading of existing service is justifiable only if offsetting factors are shown which establish that the public interest generally will be benefited." Triangle Publications, Inc., 37 FCC 307, 313 (1964). None has been shown here.

In sum, BBA submits that, for the reasons set forth in the NPRM, the relicensing of station KZNO from Nogales to Vail should be denied for failure to have demonstrated a net public interest benefit which would result. However, BBA further submits that the first local

service that Channel 253A would render to Vail is valuable in and of itself and should be implemented by means of the present counterproposal.

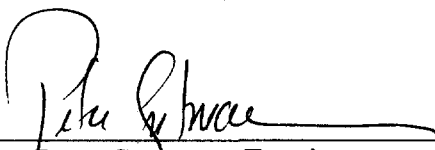
In light of the above, BBA respectfully requests that the proposal to reallocate Channel 252A at Nogales to Channel 253A at Vail be denied and that instead the FM Table of Allotments, Section 73.202(b) of the Commission's rules, be amended as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u> <u>Proposed</u>
Vail, AZ	-----	253A

BBA hereby states its present intention to apply for Channel 253A at Vail, Arizona if it is allotted and, if authorized, to build a station promptly.

Respectfully submitted,

**BIG BROADCAST OF ARIZONA, L.L.C.**

By:   
Peter Gutmann, Esquire  
Its Attorney

**PEPPER & CORAZZINI, L.L.P.**  
1776 K Street, NW  
Suite 200  
Washington, DC 20006  
(202) 296-0600


April 17, 2000

PG/rsm  
I:\wp\2291b\pleading bba comments.doc

**CERTIFICATE OF SERVICE**

I, Regina S. McFadden, a secretary in the law firm of Pepper & Corazzini, L.L.P., do hereby certify that on this 17th day of April, 2000, copies of the foregoing Comments and Counterproposal of Big Broadcast of Arizona, L.L.C. were mailed, postage prepaid, to the following:

Mark Lipp, Esquire  
Shook, Hardy & Bacon, L.L.P.  
600 14<sup>th</sup> Street, NW  
Suite 800  
Washington, DC 20005-2004  
(Counsel for Desert West Air Ranchers Corporation  
Petitioner in MM Docket No. 00-31 (RM 9815))

  
\_\_\_\_\_  
Regina S. McFadden

April 17, 2000

**ENGINEERING STATEMENT  
IN SUPPORT OF COMMENTS  
AND COUNTERPROPOSAL  
TO NOTICE OF  
PROPOSED RULE MAKING**

**April 15, 2000**

**Big Broadcast of Arizona, L.L.C.  
FM Channel 253A □ 98.5 Megahertz  
Vail, Arizona  
MM Docket No. 00-31, RM-9815**



**LAWRENCE L. MORTON ASSOCIATES**  
2867 BELDEN DRIVE  
HOLLYWOOD HILLS, CALIFORNIA 90068-1901  
(323) 467-5010 / FAX (323) 467-5848

## **ENGINEERING STATEMENT**

The information and data contained within this engineering statement were prepared on behalf of Big Broadcast of Arizona, L.L.C. ("BBA"), in support of Comments and Counterproposal to *Notice of Proposed Rule Making*, MM Docket No. 00-31, RM-9815. BBA counterproposes to amend the FM Table of Allotments, 47 C.F.R. § 73.202(b) of the Commission's Rules, by allotting Channel 253A to Vail, Arizona, and leaving intact the Channel 252A allotment at Nogales, Arizona.

### **I. VAIL, ARIZONA**

Vail is an unincorporated community within Pima County, Arizona. Vail has been assigned Postal ZIP Code 85641 by the U.S. Postal Service. The community has no aural broadcast services. The centroid geographic coordinates of Vail, referenced to the North American Datum of 1927, are:

North Latitude: 32 degrees, 02 minutes, 52 seconds  
West Longitude: 110 degrees, 42 minutes, 41 seconds

By specifying an allotment reference site that is 4.6 kilometers southeast of the center of Vail, station KZNO(FM) may continue to operate on Channel 252A at Nogales while a first local service is added to Vail. BBA proposes the following geographic coordinates for the allotment reference site at Vail:

North Latitude: 31 degrees, 57 minutes, 57 seconds  
West Longitude: 110 degrees, 34 minutes, 50 seconds

From these reference geographic coordinates, Channel 253A is fully-spaced to all current domestic FCC assignments and allotments contained within the latest *FCC FM Engineering Database*. Figure one shows in green the permissible area for Channel 253A that is fully-spaced to all domestic facilities. Figure 2 depicts the 70 dB $\mu$ F(50,50) city grade contour from a 6-kW ERP and 100-meter HAAT Class A facility operating at the proposed allotment reference site, and that the entire community would fall within the contour. (Although the Channel 253A allotment at Vail would require contour protection toward co-channel Mexican Class B station, XHSAP-FM, at Agua Prieta, the azimuthal arc of suppression is toward the southeast in a direction opposite to that of Vail.)

## II. MINIMUM SPACING REQUIREMENTS

The following table lists the nearest assignments and allocations currently on file with the required distance separations for Channel 253A. As required by § 73.207 all minimum distance separation requirements are met from the Channel 253A allotment reference site proposed for Vail toward domestic assignments and allotments. All distances were computed by the methods outlined in § 73.208(c) of the Commission's Rules and were rounded to the nearest kilometer in accordance with § 73.208(c)(8).

The proposed allotment reference site is short-spaced by 56.8 kilometers to Mexican co-channel Class B station XHSAP-FM. Therefore, Mexican concurrence is required for the proposed Channel 253A allotment at Vail.

ALLOCATION-PERTINENT STATIONS AND SPACING REQUIREMENTS OF § 73.207					
CALL LETTERS	CHANNEL /CLASS	NORTH LATITUDE	WEST LONGITUDE	ACTUAL DISTANCE	REQUIRED DISTANCE
ALLOC	250-B	30° 41' 50"	112° 09' 29"	206. Km	69. Km
KUPD	250-C	33° 19' 58"	112° 03' 53"	206	95
ALLOC	251-A	31° 19' 53"	109° 57' 05"	92	31
ALLOC	251-B	31° 41' 00"	114° 29' 35"	371	69
KOHT	252-A	32° 27' 09"	111° 05' 11"	72	72
XHPX-FM	252-C	31° 44' 19"	106° 28' 59"	388	165
KZNO	252-A	31° 23' 17"	110° 55' 38"	72	72
KKLD	252-C2	34° 41' 11"	112° 06' 58"	334	106
PRM <sup>1</sup>	253-A	31° 55' 30"	110° 37' 30"	6.18	115
PRM	253-C1	34° 41' 25"	110° 06' 00"	305	200
XHBH-FM	253-C	29° 04' 29"	110° 57' 36"	323	226
XHSAP-FM <sup>2</sup>	253-B	31° 18' 24"	109° 33' 37"	121.23	178
KKLT	254-C	33° 19' 58"	112° 03' 48"	206	165
ALLOC	255-A	31° 14' 05"	110° 11' 03"	90	31
KBDT	255-C	35° 26' 34"	110° 58' 40"	388	95
XHSIT-FM	256-B	31° 51' 52"	112° 51' 30"	215	69
KFMM	256-C	32° 53' 22"	109° 19' 23"	156	95
KOFH	256-A	31° 23' 19"	110° 56' 35"	73	31

<sup>1</sup>This record is the Petitioner's proposed allotment of Channel 253A at Vail, Arizona, MM Docket No. 00-31, RM-9815. The BBA counterproposed allotment reference site is fully-spaced to the Petitioner's station, KZNO(FM), at Nogales.

<sup>2</sup>Mexican concurrence must be obtained for the proposed short-spaced allotment of Channel 253A at Vail.

### III. CONCLUSION

The results of this study demonstrate that, upon receipt of concurrence from the Mexican government to the proposed short-spaced allotment, the FM Table of Allotments in § 73.202(b) of the Commission's Rules may be amended in technical compliance with all applicable spacing rules. Therefore, Big Broadcast of Arizona, L.L.C., respectfully requests the following change to the Table:

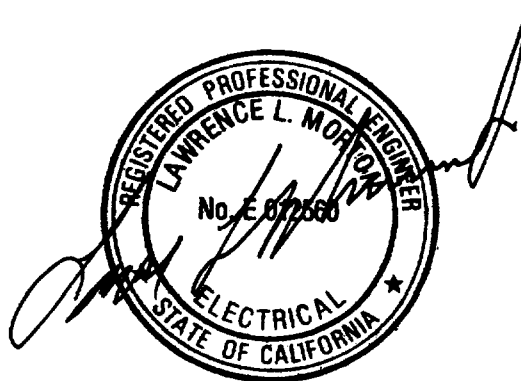
<u>CITY</u>	<u>PRESENT</u>	<u>CHANNEL</u>
Vail, AZ		----

<u>CITY</u>	<u>PROPOSED</u>	<u>CHANNEL</u>
Vail, AZ		253A

BBA asserts that, upon allotment of Channel 253A to Vail and the opening of a filing window, an application for construction permit to build a new Class A facility will be filed promptly to serve Vail, Arizona.

Respectfully Submitted,

Lawrence L. Morton, P.E.  
Consulting Engineer to Big Broadcast of Arizona, L.L.C.  
April 15, 2000





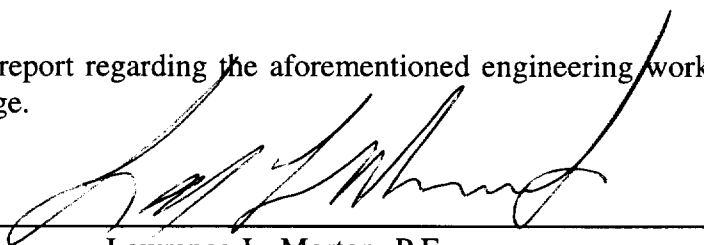
## AFFIDAVIT

State of California                     )  
  )    ss:  
County of Los Angeles                )

Lawrence L. Morton, being first duly sworn upon oath, deposes and says:

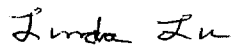
- That he is a qualified engineer,
- That he is a Registered Professional Engineer in the State of California,
- That he is a member of the Association of Federal Communications Consulting Engineers,
- That his qualifications are a matter of record with the Federal Communications Commission,
- That he has prepared many broadcast applications and engineering exhibits that have been filed with and granted by the Federal Communications Commission,
- That he has carried out such engineering work and that the results thereof are attached hereto and form part of this affidavit, and
- That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge.

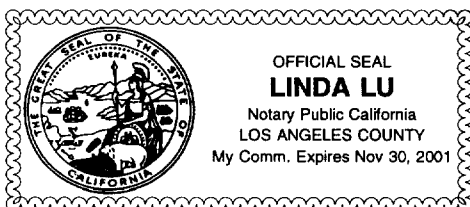
Date: April 15, 2000

  
Lawrence L. Morton, P.E.

On April 15, 2000, before me, Linda Lu, a Notary Public, in and for the State of California, personally appeared Lawrence L. Morton known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

My Commission expires 11/30/2001

  
Notary Public



Lambert Azimuthal Equal-Area

5' 00" Graticule Spacing

CENTER OF MAP:

N LAT 31° 59' 33.00"

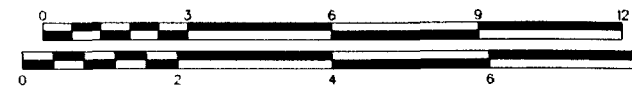
W LON 110° 37' 03.00"

Scale 1 : 156,303

FIGURE 1

CHANNEL 253A AREA TO LOCATE  
PETITIONER'S PROPOSED ALLOTMENT  
REFERENCE SITE AND COUNTERPROPOSAL  
ALLOTMENT REFERENCE SITE

KILOMETERS



STATUTE MILES



**LAWRENCE L. MORTON ASSOCIATES**  
Telecommunications Engineers  
Hollywood Hills, California

VAIL

Parlin

Area to locate

COUNTERPROPOSED ALLOTMENT REFERENCE SITE

MM DOCKET NO. 00-31 PROPOSED ALLOTMENT REFERENCE SITE

Lambert Azimuthal Equal-Area

5' 00" Graticule Spacing

CENTER OF MAP:

N LAT 32° 01' 49.00"

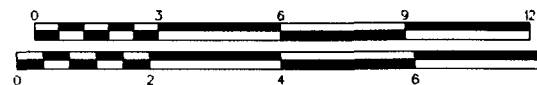
W LON 110° 38' 36.00"

Scale 1 : 183,547

FIGURE 2

70 dBU F(50,50) CITY GRADE CONTOUR  
FROM COUNTERPROPOSED ALLOTMENT  
REFERENCE SITE FOR CHANNEL 253A  
AT VAIL, ARIZONA

KILOMETERS



STATUTE MILES



**LAWRENCE L. MORTON ASSOCIATES**  
Telecommunications Engineers  
Hollywood Hills, California

